



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2588, S.D. 1, RELATING TO LIMITATION OF ACTIONS.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, March 12, 2012

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and does not oppose the bill, but makes the following comment and recommendation.

To avoid any conflict of interest, we recommend a change to subsection (d) relating to the notarized statement of a medical or mental health care professional as follows:

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff. The certificate of merit shall include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J
- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

who is knowledgeable in the relevant facts and issues involved in the action ~~and~~, who is not a party to the action[-], and who is not currently treating nor had previously treated the plaintiff.

We respectfully request that this bill be amended to include the suggested change.



HAWAII CATHOLIC CONFERENCE
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Email to: HUSTestimony@Capitol.hawaii.gov
Hearing on: Monday, March 12, 2012
Conference Room #329

DATE: March 9, 2012

TO: House Committee on Human Services
Representative John Mizuno, Chair
Representative Jo Jordan, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: OPPOSITION TO SB 2588 SD 1 RELATING TO LIMITATION OF ACTIONS

Honorable Members of the House Committee on Human Services, I am Walter Yoshimitsu, representing the Hawaii Catholic Conference. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents the Catholic Church in Hawaii. **We oppose this bill for the following reasons:**

This bill could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs. The bill expands the statute of limitations for commencement of a tort action for acts of child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707. Further, the bill provides a two-year window for revival of all actions that are presently time-barred, no matter how long ago the sexual abuse occurred, except as against the State. Although claims are revived against all others, the bill specifically provides that the State is exempt from revived claims. Finally, the bill substantially expands the concept of child sexual abuse to now include abuse of the child by another minor.

While people often single out the Catholic Church for past instances of abuse, the problem is by no means unique to the Church. There is always the potential for abuse in any institution that deals with, supervises or cares for children.

Studies actually indicate that the institutions most likely to foster an atmosphere of abuse are not private institutions, but public ones. As indicated by a study prepared for the federal Department of Education, 6.7% of students in public schools nationwide have reported being sexually abused by an educator, a much higher percentage than the reported incidence of clergy abuse of children. (U.S. Department of Education, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (2004).) Government reports also indicate that, across the country, there has been a high incidence of sexual abuse in juvenile detention facilities, with 10.3% of incarcerated youth reporting they had been sexually abused by a facility staff member during the prior year. (U.S. Department Justice, Bureau of Justice Statistics, "Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09" (2010).)

These rates of abuse are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church.

The bill, however, does not recognize this. Instead of protecting children in such situations, the bill perversely and explicitly exempts the State from liability for time-barred claims, while at the same time reviving such claims against all other institutions.

There is no rational basis for making such a distinction, especially given the empirical data regarding incidents of abuse occurring in public institutions. Further, the clear message this legislation sends is that children who have suffered abuse by State employees or under the State's control are not as worthy of legal redress as those who have suffered abuse in a private setting. For example, if a child is abused by a teacher in a private school, under this bill there is a revived right to assert a claim against the school. If the same identical situation occurred in a DOE school, however, there would be no ability to recover.

Although the State in this bill is exempted, many other institutions, including private elementary and secondary schools, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys' and Girls' Clubs, childcare programs, preschools, after school programs, camps, churches, and youth-at-risk programs, will be substantially affected by the revival of claims already barred by the statute of limitations. **Because of the lapse of time, many institutions potentially subject to suit under this bill no longer have the ability to meaningfully defend themselves from such claims.**

The reason for statutes of limitation is to reflect the fact that, over time, individual memories fade, witnesses who may prove or disprove a claim have died or are no longer available, and written records may no longer be available that would have relevance to the case. Especially in the case of nonprofits, record-keeping over a prolonged period may be far from ideal. Boards and staff change, and institutional memories are lost.

This bill, however, would now allow the assertion of claims going back for an unlimited period of years. Many institutions may be put in the situation of defending themselves in situations where not only is there a lack of evidence, but the abuser and anyone who may have been at fault for negligently overseeing or supervising the abuser are long gone. All that remains as a target for litigation may be the institution, which is now without any practical way to defend itself from the allegations.

This bill would have substantial negative impacts on the ability of nonprofits to remain open and provide services. Many nonprofits that provide services for children and families do so on very thin budgets, especially in these economically challenging times. The cost of defending against a single claim brought under this bill could have a devastating impact. Further, to the extent that such claims can be insured against, it would seem that premiums for such insurance could increase substantially if this bill became law. Again, many nonprofit organizations may not be able to pay for such insurance, and it is quite possible that such organizations would simply cease to provide services rather than the organization, as well as its directors and officers, being exposed to suit.

Another very disturbing feature of this bill is that it appears to expand the scope of claims considered child sex sexual abuse beyond abuse by adults against children. This is because the bill purports to extend the statute of limitations to within “[e]ight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later.”

Thus, no longer is the concern of this legislation the preservation of claims where it involves sexual abuse of a minor resulting from the actions of an adult such as a coach, teacher or pastor. Now, the concept of child sexual abuse is being expanded to include situations where two minors are sexually involved with one another. Have the ramifications of this been thought through? Are schools now exposed to liability where something occurred in the vicinity of a school dance? What about actions of juvenile campers with each other, of which the camp was not even aware? Are claimants now able to say that the camp should be liable because it was “responsible” for campers at the camp?

Finally, this bill will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, as we have previously testified, we believe that the focus of efforts at preventing sexual abuse should be on prevention. Over the past few years, as this problem has come to light, churches, schools and other nonprofits have taken substantial steps to reduce the possibility for abuse to occur, including substantially increased screening and background checks on potential teachers and employees, accountability and reporting procedures, and supervisory procedures to ensure that children are not put in situations and environments where they could be abused. This bill, however, which resuscitates claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

For these reasons, we believe this bill should be held in committee.

Thank you for the opportunity to testify.

Testimony for HUS 3/12/2012 8:30:00 AM SB2588

Conference room: 329

Testifier position: Support

Testifier will be present: No

Submitted by: Marci A. Hamilton

Organization: Individual

E-mail: hamilton02@aol.com

Submitted on: 3/10/2012

Comments:

Marci A. Hamilton is one of the United States' leading church/state scholars and holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University. She is the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012) and *God vs. the Gavel: Religion and the Rule of Law* (Cambridge University Press 2005, 2007). She has been a columnist on constitutional issues since 2000. Professor Hamilton has served as constitutional and federal law counsel in many important clergy sex abuse and religious land use cases in state and federal courts, and has testified before numerous state legislatures regarding elimination of the statutes of limitations for childhood sex abuse. She is frequently asked to advise Congress and state legislatures on the constitutionality of pending legislation and to consult in cases involving important constitutional issues.

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07

March 10, 2012

SUBMITTED VIA WEB DROP/EMAIL

Hon. Rep. John M. Mizuno, Chair
Hon. Rep. Jo Jordan, Vice Chair
House Committee on Human Services
State Capitol
Conference Room 329
415 South Beretania Street
Honolulu, HI 96813-2425

RE: Hearing Before Committee on Judiciary and Labor on S.B.2588, S.D.1 Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (March 12, 2012 8:30a.m.)

Dear Honorable Representatives Mizuno, Jordan & Members of the Committee:

I commend you and the Committee for taking up S.B 2588, S.D.1 which would extend and toll the statute of limitations for civil actions brought by minor victims of sexual offenses, and revive for two (2) years some actions for which the statute of limitations had previously lapsed. **If passed, it will put Hawaii in the forefront of child protection.**

There are untold numbers of hidden child predators in Hawaii who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity. This bill reduces the present danger to Hawaii's children.

This bill is a sunshine law for children. There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and at least one in five boys. Sadly, 90% never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. Most victims are abused by family or family acquaintances. This bill would protect the children of Hawaii by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also bring delayed, but still welcome, justice to these victims.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My most recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), makes the

case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues.

There are three compelling public purposes served by window legislation:

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;**
- (2) It gives chance child sex abuse survivors a fair chance at justice; and**
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.**

I have been involved in statute of limitations reform in numerous states. This is the only tried and true method of identifying the many hidden child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008).

This is a vibrant national movement to protect our children. Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Guam's bill removing the statute of limitations and creating a two-year window was signed into law by Governor Calvo on March 10, 2011.¹ Virginia² also passed and signed into law legislation extending its statutes of limitations in 2011. Florida³ and Illinois⁴ each extended or eliminated their statute of limitations in 2010. Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in South Dakota,⁵ Connecticut,⁶ New Jersey,⁷ New York,⁸ and

¹ Bills No. B033 & B034-31(COR), Acts To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, removing the statute of limitations and establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims, now Public Laws No. 31-06 & 31-07 (2011); Erin Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

² VA. CODE ANN. § 8.01-243(D) (2011), formerly H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

³ FLA. STAT. ANN. § 95.11(7) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

⁴ 735 ILL. COMP. STAT. 5/13-202.2 (2010) (enacted) (expanding statute of limitations for injury based on childhood sexual abuse to within 20 (previously 10) years of the date the limitation period begins to run or within 20 (previously 5) years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and the injury was caused by that abuse).

⁵ H.B. 1218, 87th Leg. Sess., 2012 Reg. Sess. (S.D. 2012) (pending) (rescinding the statute of limitations for any civil cause of action arising out of childhood sexual abuse).

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Oregon.⁹ Bills—including two creating a most important civil “window”—were recently introduced in both houses of the Pennsylvania legislature as well.¹⁰

Information on the statutes of limitations for child sex abuse can be found on my website, www.sol-reform.com.

Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in Hawaii right now. The window in California led to the public identification of over 300 perpetrators previously unidentified. Delaware also enacted a window, which has led to the public identification of dozens of perpetrators previously hidden. Given that most child perpetrators abuse many children over the course of their lives,¹¹ window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

SOL reform has very few detractors other than the Catholic bishops, who have misleadingly argued that window legislation is unconstitutional on the theory that it “targets” the Church. Window legislation does not target any particular perpetrator or organization. A federal trial court in the Ninth Circuit persuasively upheld the California window against such an argument. See Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMC), slip op. (S.D. Cal. Dec. 20, 2005).

⁶ S.B. No. 784, 2011 Gen. Assemb., 2011 Reg. Sess. (Conn. 2011) (pending) (eliminating limitation of time for bringing a civil action with respect to a new occurrence of sexual abuse, sexual exploitation or sexual assault in order to recognize the severity of such occurrences and give victims increased access to the civil court system.)

⁷ No. S.2405, 214th Legis. Sess., 2010-2011 Reg. Sess. (N.J. 2011) (pending) (eliminating statute of limitations for child sex abuse).

⁸ No. A.5488, 234th Gen. Assemb., 2011-2012 Reg. Sess. (N.Y. 2012) (pending) (extending the statute of limitations in criminal and civil actions for certain sex offenses committed against a child less than eighteen years of age, and creating a one year civil “window”).

⁹ H.B. 4100, 76th Gen. Assemb., 2011-2012 Reg. Sess. (Or. 2012) (pending) (eliminating criminal statute of limitations for sexual abuse crimes committed against minors). Oregon extended its civil limitations period regarding injuries arising out of child sex abuse in 2009. OR. REV. STAT. §12.117 (2009).

¹⁰ H.B. 832, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (eliminates the statute of limitations for number of enumerated criminal offenses involving child sexual abuse); H.B. 878, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends the statute of limitations in all civil cases not encompassed by House Bill 832 by allowing claims to be brought in court up to 32 years after majority; *and* establishes civil “window” which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two-year period); S.B. 1392, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends statute of limitations from to 32 years from majority; *and* establishes all important 2 year civil “window” to allow for previously procedurally time-barred child sex abuse claims to commence).

¹¹ KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 5, 37 (4th ed. 2001) available at http://www.cybertipline.com/en_US/publications/NC70.pdf. (“Except for child prostitution, most sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true under the federal Constitution, as the United States Supreme Court has explained: "The presumption against statutory retroactivity had special force in the era in which courts tended to view legislative interference with property and contract rights circumspectly. In this century, legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments." Landgraf v. USI Film Prods., 511 U.S. 244, 272 (1994); see also Republic of Austria v. Altmann, 541 U.S. 677 (2004).

In a case decided last year, the Delaware Supreme Court, sitting en banc, upheld a two-year window against a due process challenge. Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011). The California one-year window also was held to be constitutional. See Deutsch v. Masonic Homes of California, Inc., 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008).

The majority of states has not found retroactive statutes of limitations unconstitutional. See Catholic Bishop of N. Alaska v. Does, 141 P.3d 719 (Alaska 2006); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999), superseded by statute, Arizona Rev. Stat. § 12-505 (2010); Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 760, 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008); Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. Ct. App. 3d 1989); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); Shell Western E&P, Inc. v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Roberts v. Caton, 619 A.2d 844 (Conn. 1993); Whitwell v. Archmere Acad., Inc., C.A. No: 07C-08-006 (RBY), 2008 Del. Super. LEXIS 141 (Del. Super. Ct. April 16, 2008); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229 (D.C. 1990); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661 (Ga. 1996); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Roe v. Doe, 581 P.2d 310 (Haw. 1978); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161 (Idaho 1985); Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Ripley v. Tolbert, 921 P.2d 1210 (Kan. 1996); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kienzler v. Dalkon Shield Claimants Trust, 686 N.E.2d 447 (Mass. 1997); Rookledge v. Garwood, 340 Mich. 444 (Mich. 1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Panzinov. Continental Can Co., 364 A.2d 1043 (N.J. 1976); Alsenz v. Twin Lakes Village, 843 P.2d 834 (Nev. 1992); Bunton v. Abernathy, 73 P.2d 810 (N.M. 1937); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415 (Ohio 2010); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); McDonald v. Redevelopment Auth., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); Bible v. Dep't of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914 (Wash. 2006) superseded by statute, Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061 (Wash. 2007); Neiman v.

Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000) (open question); RM v. State Dept. of Family Servs., Div. of Public Servs., 891 P.2d 791, 792 (Wyo. 1995).

Hawaii law supports the window. The Hawaii Supreme Court has upheld retroactive application of a newly extended statute of limitation to revive claims that previously expired. Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) (holding that "[t]he right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. . . . [W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations."); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999).

Hawaii does provide for a two-year (2) statute of limitations for repressed memory cases, but victims typically have a difficult time dealing with such memories. Two years is a very short period of time within which to process the information, obtain the needed counseling to be ready to go to court, and then to find an attorney and proceed to the judicial process. The window would help them as well as the vast majority of victims, who do not have repressed memories and simply could not get to court before the statute of limitations expired.

Once again, I applaud you for introducing legislation intended to help childhood sexual abuse victims, and the Committee for taking up the cause of child sex abuse victims in this way. Hawaii's children deserve the passage of statutes of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. This bill creates a two-year (2) window of opportunity for Hawaii's child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods. This is a huge step forward for Hawaii's children.

Please do not hesitate to contact me if you have questions regarding window legislation or if I can be of assistance in any other way.

Sincerely,

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FACTS ABOUT CHILDHOOD SEXUAL ABUSE

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Childhood sexual abuse victims constitute a class of victims who share a number of common characteristics. One of the primary characteristics is the extreme difficulty they face making a connection between their typically serious problems in adulthood and the sexual abuse when a child. See generally, Guy R. Holmes, See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?, 17(1) Clinical Psychol. Rev. 69, 69-88 (1997); see also State v. Schnabel, 196 N.J. 116, 133 (2008) (observing that Child Sexual Abuse Accommodation Syndrome involves five behavior patterns that may be exhibited by a sexually abused child: secrecy, helplessness, entrapment and accommodation, delayed reporting, and recantation). The unexpected fallout from childhood sexual abuse – for the typical victim – is compounded by the fact that there are many different problems that can flow from sexual abuse.

The injuries a particular child sex abuse victim will suffer cover a wide swath of possibilities. Researchers in various studies have found -- specifically in men who were sexually abused as children – that long-term adaptation will often include sexual problems, dysfunctions or compulsions, confusion and struggles over gender and sexual identity, homophobia and confusion about sexual orientation, problems with intimacy, shame, guilty and self-blame, low self-esteem and negative self images and increased

anger.¹ There is also an increased rate of substance abuse, a tendency to deny and delegitimize the traumatic experience, symptoms of Post Traumatic Stress Disorder, and increased probability of fear and depression.²

Hundreds of research studies have conclusively shown that sexual abuse can alter a child's physical, emotional, cognitive and social development and impact their physical and mental health throughout his or her lifetime. A 2002 study by Elliot Nelson, M.D., et. al. reaffirmed that childhood sexual abuse has a profound negative impact throughout the victim's life. Elliot Nelson et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) Archives of General Psychiatry, 139,139-45, available at http://genepi.qimr.edu.au/staff/nick_pdf/CV321.pdf (last visited February 21, 2009). This study examined both members of nearly two thousand same-sex twins (1159 female and 832 male). Id. at 139. Twins were used to separate the effects of childhood sexual abuse from possible negative effects of family background, such as parental alcohol related problems, fighting and conflict, physical abuse, and neglect. Id. at 143-44. The study looked at same sex twin pairs where one of the twins was sexually abused as a child and one was not. Id. at 139. The study found that a person with a history of childhood sexual abuse had an increased risk for subsequently occurring adverse outcomes of:

¹ David Lisak, The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors, 7(4) J. of Traumatic Stress 525, 525-526, 544 (1994). Unlike the victim of a toxic tort, there is no medical necessity that the abuse will lead to a scientifically dispositive injury. For example, asbestos exposure leads to asbestosis, a lung disease. Child sex abuse is more like the tort in Mancuso v. Mancuso, 209 N.J. Super. 51 (App. Div. 1986), where accrual was delayed because the victim was harmed in a relatively minor car accident that would not have led victim to suspect that Parkinson's could result. Child sex abuse victims simply do not apprehend that the abuse, which they may not even experience as abuse, could lead to devastating effects in adulthood.

² Id.

- Major depression,
- Suicide attempt,
- Conduct disorder,
- Alcohol and/or nicotine dependence,
- Social anxiety,
- Rape after the age of 18 years old, and
- Divorce.

Id. at 142.

Men were close to twice as likely to suffer from major depression if they were sexually abused as children, compared with those who were not abused. Ibid. Women and men who were sexually abused as children were roughly five times more likely to attempt suicide, compared to those people that were not abused. Ibid. These adverse outcomes alone make it very difficult for victims of childhood sexual abuse to discover that the sexual acts were abuse and to discover the cause of their injuries because many simply struggle to survive the onset of drug or alcohol abuse, major depression, and suicide attempts.

Often it is not until years after the sexual abuse that victims experience these negative outcomes. Clinician Mic Hunter observed that:

Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.

Mic Hunter, Abused Boys, 59 (1991) (emphasis added).

At the time the child is sexually abused he or she is often too young to appreciate the harmful nature of the acts. Years later when the child does experience the injuries arising from the childhood sexual abuse, the victim is disabled from relating the harm to the abuse in a temporal sense the way that one would expect if the harmful event was closer in time to the realization of the injury.

In addition to delayed onset of injury, there are many other reasons that childhood sexual abuse victims may not know they were abused or injured, or able to identify the cause of their injuries until adulthood. The following reasons are by no means exclusive but often affect a child who is sexually abused:

- Most sexual abusers are someone that the child knows and trusts. In fact only 4% of child sex abusers are strangers. Wisconsin Coalition Against Sexual Assault, Child Sex Abuse, available at <http://www.wcasa.org/info/factsheets/childs.a.htm> (last visited February 22, 2009) (citations omitted).
- Often abusers manipulate the child victim into thinking that the relationship is built on mutual love. See Maxine Hancock & Karen Burton Mains, Child Sexual Abuse: Hope For Healing 33 (1987) (citations omitted).
- Children may be told by the abuser to keep the abuse a secret. See Dale Robert Reinert, Sexual Abuse and Incest 34-35 (1997).
- Victims sometimes feel shame and embarrassment about the abuse, making the victim feel they are to blame for the abuse. Mary L. Paine & David J. Hansen, Factors Influencing Children to Self-Disclose Sexual Abuse, 22 Clinical Psychol. Rev. 271, 271-75 (2002).
- Many Children lack the cognitive ability to recognize that these acts were abuse and harmful. See Margaret O. Hyde & Elizabeth H. Forsyth, The Sexual Abuse of Children and Adolescents 10 (1997).
- Some children are very confused by the physical sensations that accompany physical acts. The body releases chemicals which tell it that the sexual acts are a good thing, something pleasurable.
- For most victims, the sexual abuse is their first sexual experience and they have nothing to compare it with.

Because the victim could face any one or more of these experiences before, during, or after the time of the abuse, it is often difficult for the victim to realize that the sexual acts themselves are even abuse. See Louise D. Sas & Alison H. Cunningham, Submissions of London Fam. Ct. Clinic Inco. To Fam. Violence Prevention Div. Health

Can., Tipping the Balance to Tell the Secret: Public Discovery of Child Sexual Abuse 1, 91-92 (1995). These experiences compound the difficulty that is created by the delayed onset of the emotional problems, all of which makes it difficult if not impossible for the victim to realize that his or her problems are the result of the sexual abuse. See Mic Hunter, Abused Boys at 31, 59.

Testimony for HUS 3/12/2012 8:30:00 AM SB2588

Conference room: 329
Testifier position: Comments Only
Testifier will be present: No
Submitted by: christine johnson
Organization: Individual
E-mail: ypeia01@yahoo.com
Submitted on: 3/10/2012

Comments:

i now see window legislation as a scam.
considering the california window which i worked for believing it would help all victims i now know i was wrong it helped very few victims.. the bill appears to have been pushed thru to keep cardinal roger mahoney from going to trial and prison in exchange for paying off the majority of victims who were roman catholic victims of priests.. the archdiocese insurance companies paid and the archdiocese did not have to admit wrong doing.. please see article below.
i want to make sure that my name and my hard work to eliminat the statues of limitations on child sexual abuse is NOT connected to sb2588 or any house companion bill.. thank you for listening. christine johnson (please see article below FROM NBC NEWS LOS ANGELES

Priests Accused of Molesting Children Hiding in Plain Sight

"Many if not all these priests have admitted to sexual abuse," said an attorney who represents hundreds of plaintiffs claiming abuse at the hands of priests."They live within a mile of 1,500 playgrounds, schools and daycare centers."

By Frank Snepp and Tara Kangarlou

| Saturday, Feb 11, 2012 | Updated 9:22 AM PST

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Some 200 Catholic priests suspected of sexual abuse are living undetected in communities across California, according to an attorney who represents hundreds of plaintiffs who sued the LA Archdiocese for molestation they say was inflicted on them by priests and clergy of the church.

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Some 200 Catholic priests suspected of sexual abuse are living undetected in communities across California, according to an attorney who represents hundreds of plaintiffs who sued the LA Archdiocese for molestation they say was inflicted on them by priests and clergy of the church.

Ray Boucher has mapped sixty locations where suspect priests live, in cities and towns from northern to southern California, and provided those locations to NBC4 exclusively.

"Many if not all these priests have admitted to sexual abuse," Boucher said. "They live within a mile of 1,500 playgrounds, schools and daycare centers."

Since none of the priests has actually been convicted of sex abuse, none can be identified under Megan's Law, or their whereabouts revealed in related public databases.

"What the issue is here, is how you weigh the right of the people," said Boucher, who is also one of the attorneys representing students in the Miramonte Elementary School sex abuse scandal. "In particular the right of children to be protected from molestation versus the right of privacy."

Among Boucher's many clients in the church action are Manuel Vega and Dan Smith.

Vega is a former police officer from Oxnard who took special interest in sex crimes investigations because, he says, he was sexually abused as a teenager by his parish priest.

"He forced me to masturbate while he took pictures of me," said Vega, who believes that the public is often too squeamish to recognize what child molestation actually entails - and thus not properly outraged by it.

"When we talk about sexual abuse we're talking about sodomy," he said. "There's pubic hair, there's sweat, there're smells, there're grunts."

Dan Smith, another alleged abuse victim, is reeling from the recent collapse of his marriage which he blames in part on the psychological effects of the molestation he says he suffered as a child - at the hands of his local parish priest.

"He would rape me and then say this is what God's love feels like," Smith said, struggling to hold back tears more than twenty years after the alleged incidents.

Both men helped make legal history by joining 500 other plaintiffs in suing the LA Archdiocese for sexual molestation, with Boucher as their lead attorney.

In 2007 the LA Archdiocese reached an unprecedented \$660 million settlement with many of the plaintiffs without admitting any wrong-doing.

It also agreed to let the courts decide which of the case-related church files should be made public, including those identifying alleged and admitted predators.

But according to Boucher and court documents, the Catholic Church has since engaged in a cover-up. By Boucher's account, Church officials allowed priests suspected of sexually abusing children to retire, flee the country or hide in rehab clinics until the statute of limitations on prosecution ran out.

"What the church did is take these guys and send them off to facilities where they treat pedophile priests without ever alerting police," Boucher said. "By enabling these priests to be hidden for so many years the church protected them from being prosecuted."

Meanwhile legal disputes delayed the release of the promised personnel files, and Donald Steir, an attorney for several priests, went to court to argue that those who've been accused but not convicted should have their names and privacy protected.

"They are being punished as if they have been convicted, or at least that's the desire - to punish them," Steir said. "That's not fair."

"It's difficult if you represent an alleged terrorist or a pedophile, because people don't really care about the rights [including privacy rights] for these type of people," Steir said. "But once we erode the rights of a group of people we don't like, we effectively have started down a path where other people's rights can be similarly denied."

The courts, expressing concern for children, overruled most of these arguments and similar ones by the Archdiocese, which declined to comment for this story.

And a judge has ordered release of some personnel files, set for some time in the coming weeks. But he also credited the church for its increased sensitivity in dealing with molestation cases and decided to withhold the names of church officials who handled the earlier cases.

It is a ruling that reminds Boucher of the breakdown in accountability in the Penn state pedophile scandal.

"Look at Penn State and see how important and significant it is when people in authority enable sexual abusers to continue," Boucher said. "That underscores how significant it is to get these names out."

Under the judge's ruling the church can also keep secret, subject to further court review, the names of priests who have not been convicted and who have only one or two allegations against them or have allegations disputed by the church.

To Smith that seems like a formula for further cover-up by church officials.

"If their interests were to protect the kids, they would have released the documents," Smith said. "As a parent not knowing who your neighbor is -- that is really scary."

Many of these unidentified priests are included in Boucher's location map.

"The danger" said Vega, "is that you have a person who has this sickness in them who is amongst the children."

The plaintiffs in the church scandal are planning to appeal the latest rulings to assure broader disclosure of suspects' names and locations. But Boucher warned this could take time, allowing suspects to keep their privacy protected, as well as their undetected presence in neighborhoods across California.

[View Alleged Pedophile Priest Maps in a larger map](#)

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Posted Friday, Feb 10, 2012 - 4:17 PM PST

March 12, 2012

Dear Chair Mizuno, Vice Chair Jordan, and Committee on Human Services members:

I am a survivor of childhood sexual abuse and I support SB2588 being heard today on Monday, March 12, 2012, 8:30.

As a victim of childhood sexual abuse, you are very confused and scared, especially if the perpetrator is someone from your family, such as my half-brother, or from an institution that you are told you can trust, such as a church, school, etc. Besides being confused on who you can trust, there are feelings of shame and guilt that the abuse was your fault. Imagine having these feelings as an 11 year old child; it would be very difficult to come out and tell someone about your situation. I am now 35 years old and am finally able to freely talk about my abuse. I have seen various therapists for the past 9 years and have overcome addictions, anger, and low self-esteem. Unfortunately, the statute of limitations for civil and criminal action has passed in the state of Washington where the abuse occurred.

As you can see, child sexual abuse can be crippling. It is estimated that 1 out of 6 men have been sexually abused. The number maybe higher but it is hard to quantify because many men live in silence due to fear and shame. It can take years for a man to even admit that he was sexually abused, let alone be strong enough to name his perpetrator in court. Knowing that the statute of limitations has passed may contribute to men not confronting their past and seeking help to improve their mental well-being.

I support the intent of this bill to give survivors of childhood sex abuse their day of justice and feel whole again. But honestly, I would like to see the statute of limitations be extended even longer or be completely eliminated. Other states have enacted laws that extended the statute of limitations past the age of 26 and even eliminated it. Just a few weeks ago on March 2, 2012, South Dakota governor Dennis Daugaard signed Senate Bill 68 that eliminated the statute of limitations for civil actions in certain rape offenses where the victim was under age 13. In 2009, Oregon passed HB 2827, which extended the civil statute of limitations until the victim reaches the age of 40, or until 5 years after the discovery of connection between injury and abuse. Currently, Pennsylvania, Maine, and Arizona are also considering bills that would extend or eliminate the statute of limitations. Also, I find the certificate of merit an unnecessary hurdle for a victim to bring civil action against their perpetrator. In no other legislation passed that has extended the statute of limitations or opened a window for past claims, has a certificate of merit been required. It takes time for a victim to trust their therapist so they can open up and talk about such heinous abuse. It is very unreasonable to have them find another therapist or counselor that they trust and feel comfortable with in order to obtain a certificate of merit. This bill already states consequences for frivolous lawsuits and the concern for meritless lawsuits should be no more of a problem than in other areas of the law.

Please consider the children of Hawaii when considering this bill. Enacting such legislation will help identify predators and keep them from abusing more victims. After California passed its "window legislation" which opened a one year window in 2003, 300 perpetrators were identified. Thank you for considering this bill.

Andre Bisquera

Attached is a 5 page summary of studies regarding childhood sexual abuse compiled by the website www.sol-reform.com- Reform the Statue of Limitations on Child Sexual Abuse. The website was cited in testimony.

Testimony for HUS 3/12/2012 8:30:00 AM SB2588

Conference room: 329

Testifier position: Support

Testifier will be present: No

Submitted by: Dara Carlin, M.A.

Organization: Individual

E-mail: breaking-the-silence@hotmail.com Submitted on: 3/11/2012

Comments:

Good Morning Representatives and my apologies for not being able to testify in-person this morning.

Although there is more information and resources available about child sexual abuse now than there was 20 years ago, it can take just as long for a victim to disclose their abuse due to the consequences and trauma of what they experienced. Just this winter, the nation was shocked hearing instances of child sexual abuse that were covered up for years because of who the perpetrators were and Hawaii had its own share of child sexual abuse-related skeletons emerge with the Hawaii School for the Deaf & Blind scandal and the arrest of Cecilio Rodriguez in California. If you look at these stories, you'll see that there wasn't just one incident of abuse which is a testament to how strong the shame and secrecy of child sexual abuse is. When the victims of such abuse are finally able to verbalize what happened to them, some access to justice should be made available to them but instead, many are told that they've gone beyond the statute of limitations so there is no recourse. This shouldn't be the case.

Please support this measure that will increase a child sex abuse victim's ability to receive justice for the crime/s committed against him/her.

Thank you for this opportunity to provide testimony in support of this measure.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate